

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA, ) No. 3:14CR149TMR  
**Plaintiff,** ) GOVERNMENT'S MOTION TO DISMISS  
v. ) THE INDICTMENT  
**XIAFEN CHEN,** )  
**Defendant.** )  
 )

Pursuant to the provisions of Rule 48(a) of the Federal Rules of Criminal Procedure, plaintiff United States of America, by and through its counsel of record, the United States Attorney's Office for the Southern District of Ohio, hereby moves to dismiss the indictment against the defendant in this matter. This motion is based upon the attached memorandum of points and authorities, the

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files and records in this case, and such evidence or argument as may be presented at any hearing on this matter.

DATED: March 10, 2015

Respectfully submitted,

CARTER M. STEWART  
UNITED STATES ATTORNEY

s/Brent G. Tabacchi  
BRENT G. TABACCHI (6276029 IL)  
Assistant United States Attorney  
Attorneys for Plaintiff  
602 Federal Building  
200 West Second Street  
Dayton, OH 45402  
Telephone: (937) 225-2910  
Fax: (937) 225-2564  
[brent.tabacchi@usdoj.gov](mailto:brent.tabacchi@usdoj.gov)

**MEMORANDUM OF POINTS AND AUTHORITIES**

Federal Rule of Criminal Procedure 48(a) provides that “the government may, with leave of court, dismiss an indictment, information, or complaint.” Fed. R. Crim. Proc. 48(a). “Separation-of-powers concerns generally require a district court to defer to the government’s decision to seek a dismissal of a criminal charge because a denial of the motion would represent an intrusion upon prosecutorial prerogative.” United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). Phrased differently, “the decision to dismiss [a complaint] implicates concerns that the Executive is uniquely suited to evaluate, and a district court should be reluctant to deny its request.” Id.; see also United States v. Salinas, 693 F.2d 348, 352 (5th Cir. 1982) (“The Executive [Branch] remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated. The exercise of its discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest.”).

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Here, the United States elects to exercise its discretion and discontinue the prosecution of this case. The United States has spoken with defense counsel, who has no objection to this motion. The United States therefore respectfully requests that the Court grant this motion.

DATED: March 10, 2015

Respectfully submitted,

CARTER M. STEWART  
UNITED STATES ATTORNEY

s/Brent G. Tabacchi  
BRENT G. TABACCHI (6276029 IL)  
Assistant United States Attorney  
Attorneys for Plaintiff  
602 Federal Building  
200 West Second Street  
Dayton, OH 45402  
Telephone: (937) 225-2910  
Fax: (937) 225-2564  
[brent.tabacchi@usdoj.gov](mailto:brent.tabacchi@usdoj.gov)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 10th day of March, 2015, on defendants' counsel via the Court's ECF system.

s/Brent G. Tabacchi  
BRENT G. TABACCHI  
Assistant United States Attorney